

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Mark S. Franke et al.
Serial No. 10/735,978
Filed December 15, 2003
Confirmation No. 4244
For ABSORBENT GARMENT
Examiner Melanie Jo Hand

Art Unit 3761

November 15, 2007

REPLY BRIEF

This is a reply to the Examiner's Answer mailed October 11, 2007. Appellants' reply is being filed to respond to the Examiner's Response to Argument set forth on pages 6 and 7 of the Examiner's Answer.

The Examiner is now contending (for the first time) that Rosch et al. disclose an embodiment wherein one end of the absorbent assembly **must** be refastenably attached to the cover. See page 7, line 4 of the Examiner's Answer. In support of her position, the Examiner cites to col. 16, lines 58-67 of Rosch et al., which provides that in an alternative embodiment of the garment disclosed therein only one end of the waste containment structure can be elastically connected to the cover.

When considering the cited passage in view of the entire disclosure of Rosch et al., however, it is apparent that the passage cited by the Examiner means that one longitudinal end of the containment structure is fixed to the cover while the other longitudinal end of the containment structure is free from any attachment whatsoever to the cover. In other words, only one end of the containment structure is positively attached to the cover.

As explained in detail in Appellants' Appeal Brief, Rosch et al. disclose various embodiments wherein the containment

structure is permanently joined at or adjacent to both of its longitudinal ends to the cover. See, e.g., Fig. 1 which illustrates a garment 10 wherein a pant structure 12 and a skirt cover 14 are permanently joined at the waist of the garment, and Fig. 4 which illustrates a garment 110 wherein a trunk cover 114 and pant structure 112 are permanently joined at the waist of the garment. In an alternative embodiment of the garment 110 illustrated in Fig. 4, Rosch et al. disclose that the trunk cover 114 and the pant structure 112 can be formed and used separately. That is, there is no positive attachment between the trunk cover 114 and the pant structure 112.

Considering the passage cited by the Examiner in this context, it is clear that Rosch et al. were contemplating a hybrid embodiment wherein the pant structure of one of the various disclosed garments was permanently joined to the cover at only one of the front and back regions of the pant structure with the opposite region being free from being joined therewith. Thus, the only engagement taught or suggested by Rosch et al. between the pant structure and cover is a non-refastenable, permanent one. The passage cited by the Examiner therefore does not teach (or even suggest) that the pant structure (i.e., absorbent assembly) **must** be refastenably attached to the cover as asserted by the Examiner. In fact, Rosch et al. is devoid of any teaching or suggestion of refastenably attaching the pant structure to the cover.

The Examiner's rejection is thus based on a mischaracterization of the disclosure of Rosch et al. and therefore can not be maintained.

Conclusion

In addition to the reasons set forth in Appellants' Appeal Brief, the rejections of the claims on appeal are submitted to be in error for the reasons set forth above.

Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any fees to Deposit Account No. 12-384.

Respectfully submitted,

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Via EFS